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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-47220-2024 in/and
CRM-M-58504-2024
Date of decision: 28.11.2024

SachinPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naresh Kumar Chhokar, Advocate and
Mr. Ram Bhati, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

CRM-47220-2024

The present application has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for placing on record order dated 21.11.2024 as Annexure P-7 and exemption from filing the certified copy of the same.

In view of the averments made in the application, the same is allowed and order dated 21.11.2024 as Annexure P-7 is taken on record subject to all just exceptions.

CRM-M-58504-2024

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.05 dated 09.01.2024 under Sections 376(2)(n)/506 of IPC and Section 6 of POCSO Act, 2012 (Section 341 of IPC



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added later on) registered at Police Station Model Town, Panipat, District Panipat (Annexure P-1), Haryana.

Brief facts of the prosecution case are that the present case was registered on the complaint of complainant mentioning therein that she is having three children. Her eldest daughter/victim is 16 years old, who studies in class 8th. Her husband died nine months ago. Her daughter/victim told her two-three days ago that she was having stomach ache. For this reason, she brought her daughter/victim to PGI Rohtak on 08.01.2024 for checkup. After checking, doctor told her that her daughter/victim is four/five months pregnant. Her daughter told her that in Raj Nagar, where they used to reside and in upper portion of the same house, co-accused, Gaurav along with his family was residing, came to their room in March 2023 on finding her daughter/victim alone and committed rape with her forcefully. Her daughter told her that petitioner threatened her that if she disclose this to her mother or anyone else, he would kill her and her family. Thereafter, whenever petitioner used to find opportunity, he used to commit rape with her forcefully. Her daughter/victim told her all this and she is very scared. She requested to take legal action against him. Hence, FIR (supra) was registered.

Learned counsel for the petitioner *inter alia* contends that identically placed co-accused, namely, Gaurav, has been granted the concession of regular bail vide order dated 21.11.2024 passed by this Court in CRM-M-57014-2024 (O&M) titled as 'Gaurav Vs. State of Haryana' (Annexure P-7). He further submits that the prosecutrix has now married the petitioner and she is staying in the matrimonial home and the victim as well as her mother, who is

the complainant in the present case, have been examined by the prosecution as



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PW-2 and PW-3 respectively, have not supported its case and were declared hostile by the learned Public Prosecutor. Learned counsel further submits that the complainant clearly stated that at the time of alleged incident, the age of the prosecutrix was 19 years. As such, no offence under the provisions of POCSO Act is made out. Further, the petitioner is behind the bars since 26.01.2024 and there is nothing on record to indicate the complicity of the petitioner.

Per contra, learned State counsel produces custody certificate, which is taken on record and opposes the prayer made by the petitioner on the ground that there are serious and specific allegations against the petitioner. As such, he is not entitled to any relief. However, she could not controvert the fact that the petitioner is not involved in any other case.

Having heard the learned counsel for the parties and after perusing the custody certificate, it transpires that petitioner is behind the bars since 14.01.2024 and has undergone a period of 10 months and 07 days as on 20.11.2024 and he is not involved in any other case. The Investigating Agency has concluded the investigation and filed the final report under Section 173 Cr.P.C. before the concerned Court. Trial of the case has not even reached half way mark as out of total 24 prosecution witnesses, only 05 have been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of his rights under Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

A two Judge Bench of Hon’ble Supreme Court in ‘*Satender Kumar Antil v. CBI*’ (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Accordingly, the present petition is allowed. The petitioner-Sachin is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of CJM/Duty Magistrate concerned.

Nothing observed hereinabove shall be construed to be an expression of opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)

JUDGE

28.11.2024

Neha

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No